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Supreme Court of the United States

OCTOBER TERM, 1943

No. 974

BASIL GOULANDRIS, NICHOLAS GOULANDRIS and LEONIDAS
GOULANDRIS, doing business as GOULANDRIS BROS.,
Petitioners,

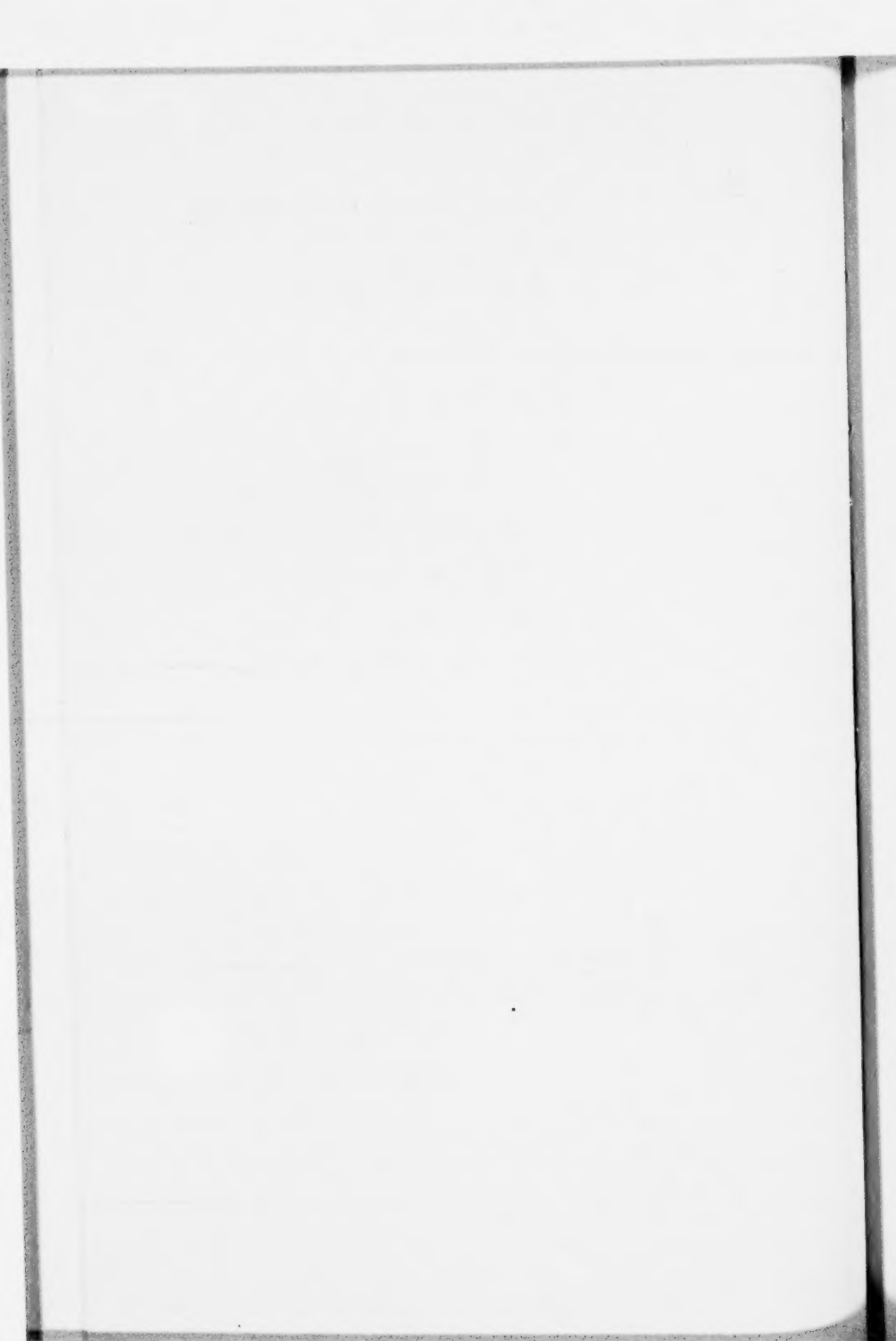
against

THE AMERICAN TOBACCO COMPANY, R. J. REYNOLDS TOBACCO
COMPANY, LIGGETT & MYERS TOBACCO COMPANY, INC.,
BANK OF GREECE, LEKAS & DRIVAS, INC., POMPEIAN
OLIVE OIL CORPORATION, and VICTOR CORY, an individual
doing business as VICTOR CORY COMPANY,

Respondents.

REPLY BRIEF IN SUPPORT OF PETITIONERS' WRIT OF CERTIORARI

I. MAURICE WORMSER AND
REID, CUNNINGHAM & FREEHILL,
Counsel for Petitioners,
76 Beaver Street,
New York City.



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Respondents, with amazing indifference to the record, challenge petitioners' good faith in initiating the proceeding for limitation of their liability. The record is devoid of any suggestion that the petition was "secretly" filed or that respondents only learned of it for the first time in December, 1942. The failure to support these unwarranted statements by appropriate reference to the record, is indicative of an adroit attempt to gloss over the variety of interpretations given by courts of different circuits to the statute under consideration which are wholly ignored in respondents' brief.

It is undisputed and the court below so found, that petitioners, residents of Greece, were unable either to sur-

render their vessel, because it "had been requisitioned by the Greek Government" upon the outbreak of war with the Axis powers or to post security for its value "since their funds in the United States had been 'frozen' by a Presidential Order effective April 28, 1941" (R. 68). Thus there is utterly no basis for respondents' inference (p. 3) that petitioners apparently intended to keep the limitation proceeding dormant "unless the outcome of the active suit should make revival worth while." Incidentally the trial of respondents' cargo damage suits was, upon their consent, successively stayed to March 1, 1943 (37), then to June 1, 1943 (39) and, since the record was printed, to the fall of 1944. These stays were granted for the obvious reason that the issues cannot be tried until Greece is liberated and witnesses now in that unfortunate country are available to give testimony.

Respondents' reference (p. 2) to the possibility of injustice resulting in a hypothetical case if a shipowner could institute a limited liability proceeding in a remote district and keep it dormant for years while defending suits of cargo claimants in another district, is wholly irrelevant but in any event, is fantastic because of Admiralty Rule 54 of this court, which deals with venue of limitation proceedings and the general rules of various district courts which authorize a dismissal of any proceeding instituted in bad faith or where nothing has been done therein within a period of one year. Admiralty Rule 54 of this court permits a shipowner to institute a limitation proceeding in a district to which the vessel might be brought only if the vessel has not been previously "libeled to answer" in another district for claims involved. If the vessel has not been libeled but the owner has been previously sued *in personam* in a district while the vessel was there, then a limitation proceeding may not be instituted in another district to which she may subsequently be brought. *Petition*

of *M. C. Butcher, et al., Owners of the Barges "Sun" and "Star," for Exoneration from or Limitation of Liability*, 52 F. Supp. 385.

The apprehensions of respondents' counsel are needless and must, in the light of the foregoing rules, be viewed with robust skepticism.

Dated, May 22, 1944.

Respectfully submitted,

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